

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

CIVIL ACTION:
NO. 01-CV-12257-PBS

THIS DOCUMENT RELATES TO:
County of Suffolk v. Abbott Labs, Inc., et al
03-CV-10643-PBS

Judge Patti B. Saris

AVENTIS PHARMACEUTICALS INC.'S REPLY

In its Opening Brief, Defendant Aventis Pharmaceuticals Inc. (“Aventis Pharmaceuticals”) argued that the County of Suffolk’s Amended Complaint (“CSAC”) should be dismissed because the County **failed to allege it paid for any drug product manufactured or sold by Aventis Pharmaceuticals.** In its Opposition, the County admits it did not allege it purchased an Aventis Pharmaceuticals product, but asserts Aventis Pharmaceuticals should not be dismissed because: (1) the County alleged it purchased Helixate®, a product manufactured and sold by Aventis Behring L.L.C., a company which allegedly has the same common parent as Aventis Pharmaceuticals; and (2) if the County purchased an Aventis Pharmaceuticals product, then the County may have been injured. *See* Suffolk County’s Opposition to the Defendant-Specific Memoranda in Support of Motion to Dismiss (“Opposition”) at 10-11. The County’s arguments are bereft of merit.

As the County is well aware, Helixate® is manufactured and sold by Aventis Behring – not – Aventis Pharmaceuticals. The County’s grouping of Aventis Behring and Aventis Pharmaceuticals under the heading “Aventis” in the CSAC (see ¶ 27), does not

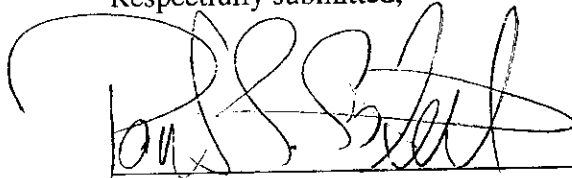
magically transform both entities into a single entity for purposes of this litigation. The simple fact is the County has failed to allege it purchased any product manufactured or sold by Aventis Pharmaceuticals Inc. For this reason, the County has failed to state a claim upon which relief can be granted and the CSAC must be dismissed as to Aventis Pharmaceuticals Inc.

Finally, the County argues that the CSAC should not be dismissed because the County is not obligated to allege that it actually purchased an Aventis Pharmaceuticals product. According to the County, since the Amended Complaint references an OIG report which mentions two Aventis products as having inflated AWP's (Anzemet® and Taxotere®), if the County paid for the two products in the past, **then** the County has been injured. See Opposition at 11. The County's argument flies in the face of this Court's January, 2003 Order. In *In re Pharm. Industry Average Wholesale Price Litig.*, 263 F. Supp. 2d 172, 194 (D. Mass. 2003), the Court directed the MDL plaintiffs that in order to survive a motion to dismiss they must "clearly and concisely allege . . . the specific drug or drugs that were purchased from [each] defendant." The County has failed to meet this requirement. The County's "So what?" response, should not be tolerated by this Court. See Opposition at 11.

Inasmuch as the County does not allege it paid for any product manufactured by Aventis Pharmaceuticals and specifically omits any Aventis Pharmaceuticals product from the list of Covered Drugs on which the County bases its injuries, the County has failed to state a claim against Aventis Pharmaceuticals upon which relief can be granted. Accordingly, Aventis Pharmaceuticals Inc. respectfully requests that the County of Suffolk's claims be dismissed with prejudice.

Dated: November 14, 2003

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul S. Schleifman', written over a horizontal line.

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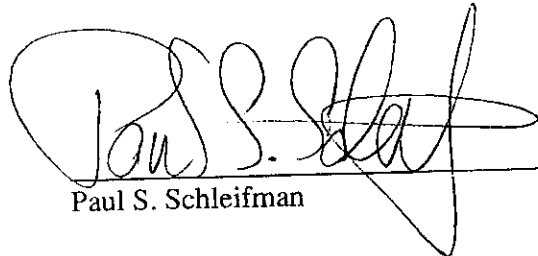
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served, this 14th day of November, 2003, to all counsel of record by electronic service pursuant to Case Management Order No. 2, by sending a copy of this document to Verilaw Technologies for posting and notification to all parties.



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November 14, 2003

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Via Hand Delivery

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Re: Citizens for Consumer Justice, et al
v. Abbott Laboratories, Inc., et al
MDL 1456
Master Case File: 01-12257PBS

Dear Sir/Madam:

Enclosed for filing regarding the above-entitled matter please find the following:

- Defendants Aventis Pharmaceuticals Inc.'s Reply

Thank you for your assistance in this matter.

Regards,



Aimée E. Bierman

AEB/gmf
Enclosure

cc: Counsel of Record

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